

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

NETSCAPE COMMUNICATIONS CORP.,)	
)	
Plaintiff,)	Case No. 1:09-cv-225-TSE-TRJ
)	
v.)	Jury Trial Demanded
)	
VALUECLICK, INC., MEDIAPLEX, INC.,)	
FASTCLICK, INC., COMMISSION)	
JUNCTION, INC., MEZIMEDIA, INC.,)	
and WEB CLIENTS, L.L.C.,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Netscape Communications Corp. (“Netscape”), by counsel and pursuant to Federal Rule of Civil Procedure 8(a), alleges the following in support of its Complaint against ValueClick, Inc. (“ValueClick”), Mediaplex, Inc. (“Mediaplex”), FastClick, Inc. (“FastClick”), Commission Junction, Inc. (“Commission Junction”), MeziMedia, Inc. (“MeziMedia”), and Web Clients, L.L.C. (“Web Clients”), (collectively “Defendants”) for patent infringement:

PARTIES

1. Plaintiff Netscape Communications Corp. is a Delaware corporation with its principal place of business at 22000 AOL Way, Dulles, Virginia 20166. Netscape Communications Corp. is a wholly owned subsidiary of AOL L.L.C., which is a Delaware limited liability company with its principal place of business at 22000 AOL Way, Dulles, Virginia 20166.

2. Upon information and belief, ValueClick, Inc., is a Delaware corporation with its principal place of business located at 30699 Russell Ranch Road, Suite 250, Westlake Village, California 91362.

3. Upon information and belief, Mediaplex, Inc., is a Delaware corporation with its principal place of business located at 160 Spear Street, 15th Floor, San Francisco, California 94105. Upon information and belief, Mediaplex, Inc., is a wholly owned subsidiary of ValueClick, Inc.

4. Upon information and belief, FastClick, Inc., is a Delaware corporation with its principal place of business located at 30699 Russell Ranch Road, Suite 250, Westlake Village, California 91362. Upon information and belief, FastClick, Inc., is a wholly owned subsidiary of ValueClick, Inc.

5. Upon information and belief, Commission Junction, Inc., is a Delaware corporation with its principal place of business located at 530 East Montecito Street, Santa Barbara, California 93103. Upon information and belief, Commission Junction, Inc., is a wholly owned subsidiary of ValueClick, Inc.

6. Upon information and belief, MeziMedia, Inc., is a California corporation with its principal place of business located at 103 E. Lemon Ave., Suite 200, Monrovia, California 91016. Upon information and belief, MeziMedia, Inc., is a wholly owned subsidiary of ValueClick, Inc.

7. Upon information and belief, Web Clients, L.L.C., is a Delaware limited liability company with its principal place of business located at 2201 N. Front St., Harrisburg, Pennsylvania, 17110. Upon information and belief, Web Clients, L.L.C., is a wholly owned subsidiary of ValueClick, Inc.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Upon information and belief, this Court has personal jurisdiction over Defendants because Defendants have regularly and purposefully availed themselves of the privilege of conducting business activities within Virginia and this Judicial District. In addition, upon information and belief, personal jurisdiction is proper because Defendants have committed acts of infringement in this Judicial District.

10. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because Defendants are subject to personal jurisdiction in this Judicial District and the infringing activity has occurred and continues to occur in this Judicial District.

FIRST CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 5,774,670

11. The allegations of Paragraphs 1-10 are incorporated herein by reference.

12. Netscape is the assignee and sole owner of all right, title, and interest in United States Patent No. 5,774,670 (“the ’670 patent”), entitled “Persistent Client State in a Hypertext Transfer Protocol Based Client-Server System,” which issued on June 30, 1998. A true and correct copy of the ’670 patent is attached hereto as Exhibit A.

13. ValueClick and its subsidiaries are an online marketing services company. Collectively, Defendants offer and provide in the United States services, technology, and products for various business segments, including media, affiliate marketing, and comparison shopping. Among other things, Defendants sell targeted and measurable online advertising campaigns to advertisers and advertising agency customers.

14. Defendants have been and are now infringing, inducing others to infringe, and/or contributing to the infringement by others, one or more claims of the ’670 patent by making, using, selling, and/or offering to sell in the United States, online advertising and marketing

products, services, and technology that utilize HTTP state information in a manner covered by one or more claims of the '670 patent.

15. Defendants' infringing products, services, and technology include, but are not necessarily limited to: display advertising, behavioral targeting, and lead generation products, technology, and services of ValueClick, FastClick, and Web Clients; the ValueClick Media Network; affiliate marketing products, technology, and services of Commission Junction, including Internet user tracking and reporting services; comparison shopping products, technology, and services of MeziMedia, including those provided through Smarter.com, CouponMountain.com, and MoreRebates.com; and online advertising and marketing products, technology, and services of Mediaplex, including the MOJO Adserver; each of which uses state information and/or transmit a state object which specifies state information from an HTTP server to an HTTP client.

16. Upon information and belief, at least after the filing of the Complaint, Defendants have infringed and continue to willfully infringe the '670 patent.

17. Defendants' acts of infringement have injured and damaged Netscape.

18. Defendants' infringement has caused irreparable injury to Netscape and will continue to cause irreparable injury until Defendants are enjoined from further infringement by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. A judgment against Defendants as to infringement of the '670 patent;
2. A permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, subsidiaries, parents, licensees, assigns, and customers, and all others acting in concert or participation with them, from further

acts of infringing, inducing infringement, and/or contributing to the infringement of the '670 patent;

3. A judgment against Defendants for money damages sustained as a result of Defendants' infringement of the '670 patent in an amount to be determined at trial as provided under 35 U.S.C. § 284, including enhanced damages;

4. An accounting for infringing sales not presented at trial and an award by the Court of additional damages for any such infringing sales;

5. An award of pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;

6. A finding that this case is an exceptional case pursuant to 35 U.S.C. § 285;

7. An award of reasonable attorneys' fees and costs incurred in connection with this action;

8. A compulsory future royalty; and

9. Any and all other relief as the Court finds just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully requests trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure of all issues in this action so triable.

Date: May 19, 2009

Respectfully submitted,

By: /s/ Robert L. Burns
Robert L. Burns (VSB # 65159)
Umar Arshad (VSB #74638)
Nicholas J. Nugent (VSB #77141)
FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER, LLP
Two Freedom Square
11955 Freedom Dr.
Reston, VA 20190
Phone: (571)-203-2700
Fax: (202) 408-4400

Gerald F. Ivey (DCB #367009)
C. Gregory Gramenopoulos (VSB #38633)
John M. Williamson (DCB #472713)
FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER, LLP
901 New York Ave., NW
Washington, DC 20001
Phone: (202) 408-4000
Fax: (202) 408-4400

**Attorneys for Plaintiff
Netscape Communications Corp.**

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2009, I will electronically file the foregoing

First Amended Complaint For Patent Infringement with the Clerk of Court using the

CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Amy S. Owen
aowen@cochranowen.com
Sheila Costin
scostin@cochranowen.com
COCHRAN & OWEN, LLC
8000 Towers Crescent Drive, Suite 160
Vienna, VA 22182
scostin@cochranowen.com
Phone: (703) 847-4480
Fax: (703) 847-4499

Attorneys for Defendants

/s/ Robert L. Burns
Robert L. Burns (VSB # 65159)
robert.burns@finnegan.com
Umar Arshad (VSB #74638)
umar.arshad@finnegan.com
Nicholas J. Nugent (VSB #77141)
nicholas.nugent@finnegan.com
FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER, LLP
Two Freedom Square
11955 Freedom Dr.
Reston, VA 20190
Phone: (571)-203-2700
Fax: (202) 408-4400

Gerald F. Ivey (DCB #367009)
gerald.ivey@finnegan.com
C. Gregory Gramenopoulos (VSB #38633)
c.gregory.gramenopoulos@finnegan.com
John M. Williamson (DCB #472713)
john.williamson@finnegan.com
FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER, LLP
901 New York Ave., NW
Washington, DC 20001

Phone: (202) 408-4000
Fax: (202) 408-4400

Attorneys for Plaintiff
Netscape Communications Corp.